

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

Gannon & Scott, Inc.

Plaintiff

vs.

Peggy Tolan and Elizabeth Tolan  
and Sarah Tolan

Defendants

Civil Action No. 05-11386 WGY

**MOTION FOR LEAVE TO DEPOSIT FUNDS  
INTO THE REGISTRY OF THE COURT AND FOR OTHER RELIEF**

Plaintiff Gannon & Scott, Inc. ("Gannon & Scott"), hereby moves this Court pursuant to Rule 67 of the Federal Rules of Civil Procedure for an order (i) permitting it to deposit the sum of \$27,844.85 (the "Deposit Amount") into the Registry of the Court; and (ii) discharging it from any further liability with respect to the Deposit Amount and enjoining Defendants from bringing any action against it concerning the Deposit Amount. Except as otherwise defined in this Motion, all defined terms used in this Motion are as set forth in the Complaint.

In support of this Motion, Plaintiff represents as follows:

1. On or about June 30, 2005, Plaintiff initiated an action for interpleader as to the beneficiaries of the proceeds of the ERISA qualified retirement plan policy of the late Edward Tolan by filing a Complaint for Statutory Interpleader. The ERISA qualified retirement plan proceeds consists of \$34,806.06.

2. Gannon & Scott is required to withhold 20% (\$6,961.21) for mandatory federal tax withholding if the beneficiary is not the spouse. If the spouse is determined by this court to be the proper recipient of the retirement plan proceeds, the amount withheld (\$6,961.21) will be released to the spouse along with the \$27,844.85. If this court determines that the daughters are the proper recipients of the retirement plan proceeds, the amount withheld (\$6,961.21) must be and will be paid over to the Internal Revenue Service by Gannon & Scott.

3. As a condition of proceeding with the interpleader and as a condition for the assertion of subject matter jurisdiction over the interpleader claim, 28 U.S.C. § 1335(a)(2) requires that the sum in dispute be deposited into the Registry of the Court.

4. Plaintiff makes no claim to the Deposit Amount.

5. Plaintiff has no interest in which of the parties asserting adverse claims against the Deposit Amount recovers all or any portion of the sums sought to be deposited. Since Plaintiff has no further interest in the Deposit Amount and seeks to be discharged from this action, the deposit of the disputed sums is a precondition to that discharge.

6. The sum sought to be deposited, the Deposit Amount of \$27,844.85, represents what would be the highest amount sought by the daughters of the late Edward Tolan asserting adverse claims against property or monies currently held by Plaintiff, and is, therefore, the property amount to be deposited with the Court for the purposes described above. The amount withheld by Gannon & Scott (\$6,961.21) will be paid over to the IRS or to Peggy Tolan, after this Court determines the proper claimant.

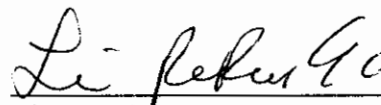
7. Plaintiff respectfully requests that Plaintiff be discharged from any further liability with respect to the Deposit Amount and that this Court enjoin the Defendants from

bringing any action against it with respect to these amounts or the mandatory federal tax withholding.

Date: July 27, 2005

Gannon & Scott, Inc.

By its Attorneys,

A handwritten signature in cursive script, appearing to read "Linda Rekas Sloan", is written over a horizontal line.

Linda Rekas Sloan, Esq.

Salter, McGowan, Sylvia & Leonard,

Incorporated

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**CERTIFICATE OF SERVICE**

I hereby certify that I have this date served a copy of the attached **MOTION FOR LEAVE TO DEPOSIT FUNDS INTO THE REGISTRY OF THE COURT AND FOR OTHER RELIEF** on the persons listed below and/or on the attached list by first-class mail, postage prepaid.

Brian J. Sylvia, Esq.  
Watt & Sylvia  
628 Pleasant Street  
One City Hall Square  
New Bedford, MA 02740

Peggy Tolan  
Inmate # F80370  
Massachusetts Correctional Institution  
99 Loring Drive  
Framingham, MA 01702

July 22, 2005

Brenda E. Sambucini